

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

RALPH COLLINS,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 89-80

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This appeal contests Spokane County Air Pollution Control Authority's ("SCAPCA") denial of a variance to burn insect infested pine limbs within a no-burn area, pursuant to provisions of RCW 70.94.181, and SCAPCA's Reg. 1, Article III. The Pollution Control Hearings Board held a hearing on February 21, 1990, in Spokane, Washington. Board members present were: Harold S. Zimmerman, Presiding, and Judith A. Bendor, Chair.

Appellant Ralph Collins appeared and represented himself. Attorney Mary Smith of Miller & Wainwright represented Spokane County Air Pollution Control Authority.

1 Caryn E. Winters of C.W. Court Reporting recorded the
2 proceedings. Witnesses were sworn and testified. Exhibits were
3 admitted and examined. Argument was made.

4 From the foregoing, the Board has deliberated and makes these:

5 FINDINGS OF FACT

6 I

7 Appellant Ralph Collins owns and lives on 3-acres of property in
8 an area called Ponderosa, southeast of the City of Spokane and south
9 of Spokane Valley. The property contains several hundred pine trees.
10 Twenty of his Ponderosa pines became infested with pine beetle. He
11 cut down sixteen of them.

12 II

13 Pine beetle infestation is ubiquitous in the Spokane area.
14 Part of the cut trees Mr. Collins intended to use for firewood.
15 Mr. Collins applied to SCAPCA for a variance to be allowed to open
16 burn the remaining portions of the 16 trees (the limbs and needles) on
17 his property.

18 Before such open burning can lawfully occur, a variance has to be
19 obtained from SCAPCA because the property is in an area designated as
20 "no burn." "No burn areas" are designated where ambient air quality
21 particulate standards are exceeded or are threatened to be exceeded.
22 In this instance, the Collins property is in an area where standards
23 are threatened to be exceeded.

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III

The neighborhood around the Collins property is residential. The nearest neighbor is 100 yards away. The lots vary in size from 1/3 to 1 acre.

IV

Mr. Collins applied to SCAPCA for a variance. A notice was published in the newspaper and a public hearing was held. No objections were received. The SCAPCA Board denied the variance request which Mr. Collins appealed to this Board.

V

The amount to be burned is approximately 6 to 7 piles, 10 feet in diameter by 3 feet high. It is estimated two burn days would be needed. Since the trees were cut, they have hardened and it would be difficult to chip them into smaller pieces to facilitate more efficient combustion.

It would cost approximately \$300 to dispose of the trees at the landfill some eight to nine miles away.

Mr. Collins is 66 years old and is retired, depending on Social Security. He has a fixed income. Hauling the material to the dump would be a serious economic hardship for him.

VI

Burning the trees on-site is somewhat less likely to spread beetles to other properties.

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(3)

1 According to SCAPCA, the best time to burn in terms of
2 meteorological conditions is usually a summer afternoon. As a part of
3 its duties SCAPCA makes forecasts of these conditions.

4 VII

5 In 1989 SCAPCA granted (at least) four variances for open burning
6 in "no burn" areas:

7 1. Resolution and Order No. 89-02 to Terry Thomsen of Spokane
8 for the burning of woodwaste from the removal of insect infested
9 trees. This property is in a very isolated locale.

10 2. Resolution and Order No. 89-03 to Thacker Orchards in
11 Veradale for burning woodwaste from pruning 6-7 acres of apple trees.
12 The orchards are a commercial operation. Burning is a better way to
13 prevent disease than to leave the prunings as cuttings on the ground.
14 Burning is apparently cheaper than hauling to a dump. The population
15 density surrounding this orchard is less than around the Collins
16 property. But the nearest neighbor to Thacker is only 100 yards from
17 the burn pile.

18 3. Resolution and Order No. 89-04 to Van Hees Orchard of
19 Veradale for burning apple tree prunings. There are residential
20 properties to the north, and a neighbor as close as 50 yards.

21 4. Resolution and Order No. 89-06 to Walk-in-the-Wild Zoo,
22 Spokane, to burn about 40 insect infested trees, 142 cubic yards. The
23 variance required that the burning be done before June 1, 1989, and be
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1 in accord with permit conditions established by the control officer.
2 The Zoo is in the Spokane Valley, and there are no residences for
3 about a half mile around the Zoo.

4 Walk-in-the-Wild failed to burn the trees by the deadline, and a
5 variance extension was denied.

6 VIII

7 Mr. Collins, at the time of his application, volunteered to burn
8 at any time specified. He said if any of his neighbors had a
9 breathing problem, he would immediately stop. He said his wife
10 suffers from asthma.

11 IX

12 Any Conclusion of Law which is deemed a Finding of Fact is hereby
3 adopted as such.

14 From these Findings of Fact, the Board makes these:

15 CONCLUSIONS OF LAW

16 I

17 The Pollution Control Hearings Board has jurisdiction over these
18 parties and these matters. Chaps. 70.94 and 43.21B RCW.

19 II

20 The Washington State legislative policy on open burning, states
21 in the Clean Air Act, PCW 70.94.740 that:

22 [. . .] the burning of outdoor fires. [. . .]
23 should be allowed only on a limited basis or under
24 strict regulation and close control.

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1 Pursuant to the provisions of the Washington Clean Air Act at
2 RCW 70.94.181, the Spokane County Air Pollution Control Authority, has
3 the authority to grant a variance from the burn ban rules and
4 regulations. and has done so at least four times in 1989. See Finding
5 of Fact VII, above.

6 The applicable SCAPCA Variance is found at Regulation I,
7 Article III which states in pertinent part:

- 8 A. [. . .] The Board may grant such variance, but
9 only after public hearing or due notice, if it
finds that:
- 10 1. The emissions occurring or proposed to occur do
11 not endanger public health or safety; and
- 12 2. Compliance with the rules or regulations from
which variances are sought would produce serious
hardship without equal or greater benefits to the
public.
- 14 B. No variance shall be granted pursuant to this
15 section until the Board has considered the relative
16 interests of the applicant, other owners of
property likely to be affected by the discharges,
and the general public.

17 III

18 We conclude given the facts in this case, that under specified
19 conditions, the burning of the 16 trees would not endanger the public
20 health or safety if:

- 21 1. Burning were conducted only on days specified by SCAPCA;
22 2. Any complaints during the burning on health or safety grounds
23 lead to the immediate cessation of the burning and no future
24 burning would occur under this variance application; and

1 3. Burning were concluded within one year of the date of this
2 decision. SCAPCA Regulation 2, Article III.A.1.

3 IV

4 We conclude that it has been shown that a variance denial would
5 cause Mr. Collins a serious hardship. Article III.A.2. We further
6 conclude, particularly given the four other variances granted by
7 SCAPCA in 1989 to allow open burning in "no burn areas", that it is
8 more likely than not that equal or greater benefits to the public
9 would not occur if the variance were denied. Article III.A.2. In
10 reaching these conclusions, we have considered the relative interests
11 of the general public, the applicant, and others.

12 V

13 Any Finding of Fact deemed to be a Conclusion of Law is hereby
14 adopted as such.

15 From these Conclusions of Law, the Board enters this:
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ORDER

That the SCAPCA denial of the Collins' variance is REVERSED. The matter is REMANDED for the issuance of a variance, including the conditions specified at Conclusion of Law III.

DONE this 6th day of March, 1990.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


JUDITH A. BENDOR, Chair